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SUPREME COURT U.S.
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INTERSTATE EXTRADITION

Is the jurisdiction of the Courts of the United States exclusive?

BRIEF AND ARGUMENT OF DEFENDANT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 1258.

W. L. ROBB, PLAINTIFF IN ERROR.

vs.

P. CONNOLLY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

A. C. SEARLE, Attorney for Defendant in Error.
E. C. MARSHALL, Attorney-General of California of Counsel

H. G. SIEBERST, Attorney for Plaintiff in Error.
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In the Supreme Court of the United States.

October Term, 1883.

W. L. Robb, *Plaintiff in Error,*
versus
Patrick Connolly, *Defendant in Error.*
No. 1,258.

IN ERROR TO THE SUPREME COURT OF CALIFORNIA.

BRIEF FOR DEFENDANT IN ERROR.

The plaintiff was held in custody by the defendant, who was sheriff of the city and county of San Francisco, for contempt of the superior court of said city and county, in failing to produce the body of one C. H. Bayley, upon a writ of habeas corpus.

Upon petition of said plaintiff to the supreme court of the state of California for a writ of habeas corpus to be released from the custody of said sheriff, and upon the hearing thereof, the supreme court say:

"The only inquiry in this case relates to the power of the court "below to compel the *production of the body* of the prisoner before it, "so that the cause of his imprisonment and detention can be inquired "into, and on this point *we have no doubt.* It was not the duty of "the court issuing the writ, nor was it obliged to accept as true the "return of the party. It was within the *jurisdiction of the court,* at "least, to inquire into the facts of the case, and the alleged cause of "detention, and to this end it was proper that the prisoner should be "brought into the presence of the court, in obedience to the command "of the writ; whereupon the prisoner would have had a right to *traverse* "*the return.* People ex rel. v. Donohue, 84 N. Y. 438; People v. "Brady, 56 id. 182; Norris v. Newton, 5 McLean, 99; State v. Schle- "man, 4 Harr. (Del.) 577. This the petitioner refused to do, and by "such refusal was guilty of a contempt of court."

In the case referred to, State v. Schlemn, 4 Harrington (Del.) 578, Booth, C. J., says, speaking of the writ of habeas corpus:

"It is in the nature of a *writ of error* to examine into the legality "of the commitment, and for that purpose to *bring up the body* of "the prisoner with the cause of his detention."

The definition of the words "habeas corpus" is strongly expressive of the object of the writ. Bouvier defines it to be "A writ directed to the person detaining another, and commanding him to *produce the body* of the prisoner at a certain time and place, with the day and cause of his capture and detention, to do, submit to and receive whatever the court or judge awarding the writ shall consider in that behalf."

"The production of the body constitutes an essential element of this proceeding." (Hurd on habeas corpus, 2d ed. 239.)

"It deals with present restraints upon the living corporeal man, and it *demands his presence before the court,* face to face with his jailor.

"Without the production of the body," says the supreme court of Massachusetts, "the writ is *without effect*, the case has no status, and the court will hear no evidence upon the question of the validity of the imprisonment." (Citing Commonwealth v. Chandler, 11 Mass. Rep. 83; Hurd on habeas corpus, 2d ed. 239, 240.)

"The person to whom the writ is directed if he is served must "*bring the body* of the party in his custody, or under his restraint, "according to the command in the writ except in cases specified in "the next section. (Penal Code of Cal. sec. 1481.)

The next section reads as follows:

"When from sickness or infirmity of the person, directed to be "produced, he cannot without danger be brought before the court or "judge, the person in whose custody or power he is may state that "fact in his return to the writ, verifying the same by affidavit. If "the court or judge is satisfied of the truth of such return, and the "return to the writ is otherwise sufficient, the court or judge may "proceed to decide on such return and dispose of the matter as if said "party had been produced on that writ, or the hearing thereof may "be adjourned until such party can be produced. (Penal Code 1482.)

"The party brought before the court or judge on the return of the "writ may *deny or controvert* any of the material facts or matters "set forth in the return or except to the sufficincy or allege any fact "to show either that his imprisonment or detention is unlawful or "that he is *entitled to his discharge*. The court or judge must there- "upon proceed in a summary way to hear," etc. (Penal Code 1484.)

The United States statutes provides that "the person making the return, shall at the same time bring the body of the party before the judge who granted the writ." (Revised Statutes U. S. 2d Ed. p. 143, sec. 758.)

The foregoing authorities, plainly establish, that, when a writ of *habeas corpus* has issuid the body of the prisoner must be produced, and a return made, before the court can proceed to a further hearing, except as provided in sec. 1482 above cited, which does not embrace this case.

The reason for the production of the prisoner is manifest. His interests are mainly to be affected, and he has a right to hear and know all that is done concerning him, and the only way the law has given of imparting that knowledge is his production in court, and as the supreme court of California in this case says, that he may have the right if he desires to traverse the return.

It was therefore the duty of Robb to produce the body of Bayley in court, as directed by the judge of the superior court, and failing to do so he was guilty of contempt.

QUESTION OF JURISDICTION.

The superior court had power to issue the writ.

"Said court and their judges, or any of them, shall have power to issue writs of mandamus, certiarori, prohibition, quo warranto and

habeas corpus, on petition by or on behalf of any person in *actual custody* in their respective counties.

Code of C. P. of Cal., sec. 76, subd. 5.
Const. of Cal., art. 6, sec. 6.

"The privilege of the writ of habeas corpus shall not be suspended unless in cases of rebellion or invasion, the public safety may require its suspension.

Const. Cal., art. 1, sec. 5.
Const. U. S., art. 1, sec. 9.

From the foregoing it appears that the superior court had the right to issue the writ, the party being in *actual custody*, and that it had jurisdiction to that extent; and if so, it had a right to require the production of the body, according to the direction of the writ.

The plaintiff contends that he is an officer of the United States, and that the state courts have no jurisdiction to compel him to produce his prisoner

Whether an officer of the United States or not, we contend that as a person was held in *actual custody* the superior court had the right to inquire into the cause of imprisonment, and in making that investigation to compel the production of the prisoner before it. In fact, no return could be made to the writ until the prisoner was produced, except in case of sickness or infirmity. In this case a return was made and a refusal to produce the prisoner, thereby recognizing the validity of the writ as far as possible, and at the same time without any meritorious cause refusing to obey the writ by the production of the body.

If the court had no power to issue the writ they should have objected to the proceeding and not invited an investigation by a return without the production of the body.

"The several states, in their character of sovereign political communities, possess all the judicial power appertaining to *independent nations*, except what they have committed to the federal government."

Hurd on habeas corpus, 2d ed. 153.

CONCURRENT JURISDICTION.

"Jurisdiction in habeas corpus, as we have seen, is granted to the federal courts and judges only in certain cases, but it is not by the constitution or the act of congress declared to be exclusive in them. Accordingly the state tribunals exercising a judicial power which they possess independent of national authority, and of which they have not been divested by the constitution or any law of the United States, have always exercised in these cases *concurrent jurisdiction with the federal courts.*"

Hurd on habeas corpus, 2d ed. 154

"It may be considered settled that state courts may grant the writ in all cases of illegal confinement under the authority of the United States, and the weight of authority clearly is that they may decide as to the *legality of the imprisonment*, and discharge the prisoner if his detention be illegal, though the determination may involve questions

of the constitutionality of acts of congress or the jurisdiction of a court of the United States." Id. 156.

The great importance attached to this case depends upon the fact that the circuit court of the United States for the district of California came to an entirely different conclusion than that held by the supreme court of California.

The circuit court relies entirely for its opinion upon the cases of Ableman v. Booth and United States v. Booth, 21 How. 507, and the Tarble case, 13 Wall. 397.

These cases do not meet the point decided by the supreme court of California, for the body of the prisoner was produced by the person having the custody according to the command of the writ, and therefore at most the cases are merely *dictum*.

The very able judge delivering the decision of the circuit court of the United States, may have overlooked the facts contained in those cases, and relying upon the rather profuse language of the decisions, may have thought they supported his positions; but when we look at the nature of the writ, the very essence of it being the *taking and production of the body*, and at the United States statute which says that "the person making the return shall at the same time bring the body," and the penal code of California, which says that the person to whom the writ is directed must bring the body, we cannot say less than the doing away of those would be doing away with the writ itself; or, as the supreme court of Massachusetts has said, "the writ is without effect, the case has no status and the court will hear no evidence upon the question of the validity of the imprisonment."

The plaintiff in error justifies himself for not producing the body of the prisoner for the reason that he holds said Bayley under the authority of the United States. It is not clear that he is so held. We see nothing in the record which meets our idea of demand according to the requirement of art. 4, sec. 2 of the constitution of the United States. The governor of Oregon simply makes known that he has authorized and empowered the plaintiff to take and receive from the proper authorities of the state of California C. H. Bayley, a fugitive from justice, and convey him to the state of Oregon.

"Whenever the executive authority of any state or territory demands any person as a fugitive from justice of the executive authority of any state or territory to which such person has fled, and produces *a copy of an indictment found, or an affidavit made*, before a magistrate of any state or territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such person appear within six months from the time of

the arrest, the prisoner may be discharged. All costs and expenses incurred in the apprehending, securing and transmitting such fugitive to that state or territory making such demand, shall be paid by such state or territory."

Revised Statutes of the United States, sec. 5278.

"A person charged in any state of the United States with treason, felony, or other crime, who flees from justice and is found in this state, must, on demand of the executive authority of the state from which he fled, be delivered by the governor of this state, to be removed to the state having jurisdiction of the crime."

Penal Code of Cal. 1548

The records of this case shows no copy of an indictment found or affidavit made, showing that Bayley had committed any crime. The governor of Oregon represents Bayley as a fugitive from justice. This, we say, is not a compliance with the statutes of the United States or the penal code of California, and therefore there is no showing that Bayley is held under authority of the United States.

Whether under authority of the United States or not, the cause of Bayley's imprisonment could be inquired into by a state court. Murray, C. J. says:

"The very object of the habeas corpus was to reach just such cases, and while the courts of the state possess no power to control the executive discretion and compel a surrender, yet having once acted that discretion may be examined into in every case where the liberty of the subject is involved."

Manchester's case, 5 Cal. 238.

From the review we have made, it is contended that the decision of the supreme court of California is correct, and that the plaintiff was guilty of contempt.

Respectfully submitted,

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E. C. MARSHALL,
Attorney-General of the State of California.

Service of copy of this brief is hereby admitted.

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